IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11-10-2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

C.R.P.PD.No.1188 of 2006

J.Uma Maheswari ... Petitioner

Versus

S.Peter ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 1.8.2006 made in I.A.No.1470 of 2006 in O.S.No.414 of 2006 on the file of the District Munsif Court, Poonamallee.

For Petitioner : Mr.R.Gandhi,Senior counsel for
Mr.V.P.Sengottuvel.

For respondent : Mr.V.Ayyadurai.

ORDER

Aggrieved over the order of injunction granted by the learned District Munsif, Poonamallee made in I.A.No.1470 of 2006 in O.S.No.414 of 2006, this civil revision petition has been filed.

2.Brief facts of the case are as follows:

The respondent/plaintiff has filed O.S.No.414 of 2006 and the same is pending before the District Munsif, Poonamallee. The prayer in the suit is for bare injunction. The respondent has also filed I.A.No.1470 of 2006 for ad-interim injunction restraining the defendant/petitioner herein, his men and agent from interfering with the possession of the respondent.

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3.The learned District Munsif, Poonamallee passed an order as follows:

> "Heard. Perused the documents. prima facie made out. Hence injunction till 18.9.2006. Notice to the respondent including private notice also."

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4.Aggrieved over the said order, this civil revision petition has been filed.

5.Mr.R.Gandhi, the learned Senior counsel appearing for the revision petitioner would contend that the learned District Munsif, Poonamallee has passed the injunction order without proper application of mind and that the order is not a speaking order. The learned counsel would further contend that in cases where exparte injunction is granted, the learned judge had to give sufficient reason as to why exparte injunction is granted.

6.The learned counsel appearing for the respondent would contend that against an interim order passed under Order 39 Rule 1,2 and Section 94 C.P.C. the parties cannot invoke Article 227 of Constitution of India, since it is not a final order.

7.Mr.R.Gandhi, the learned counsel appearing for the revision petitioner would contend that when irregularities committed by the Subordinate Court, the High Court can invoke Article 227 of Constitution of India to correct the mistake committed by the Subordinate Court.

8.The learned counsel appearing for the revision petitioner pressed into service the judgement reported in 2002(1)CTC 458 in a case Rt Rev Dr.V.Devasahyam, Bishop in Madras CSI and another vs. D.Sahayadoss and two otheres, wherein it is held as follows:

> "It is also relevant to note the further conclusion of Their Lordships in para 18,
>
> "18. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances, the aggrieved party can prefer an appeal only against an order passed under Rules 1,2,2A,4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or reversional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances, the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant of vacation of a temporary injunction, against the order remaining in force. In

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such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases, the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the exparte temporary injunction shall for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule." Mr.N.D.Behetty very much relied on the conclusion of Their Lordships in para 12 and 18 extracted above. Though the said decision supports the contention of the learned counsel for the respondents, the facts in that case clearly show that the learned Single Judge of the High Court interfered in the revision filed under Article 227 of the Constitution mainly on the ground that the trial court ought not have granted an order of injunction at the first stage itself which could operate beyond 30 days and according to the learned single Judge, such a course is impermissible under Order 39 Rule 3-A of the Code. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of exparte injunction without notice. Order 39, Rule 3-A of the Code emphasises that Court should dispose of the applications for injunction within 30 days. It is clear that where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within 30 days from the date on which the injunction was granted; and where it is unable so to do, it shall-record its reasons for such inability. That is not the position in the case on hand. In the present case, the learned Subordinate Judge, Cuddalore, by order dated 29.11.2001, case has granted ad-interim injunction till 20.12.2001. The Hon'ble Supreme Court after holding that the said Rule does not say that the period of injunction should be restricted by the Court to 30 days at the first instance, but the court should pass final orders on it within 30 days from the date on which the injunction was granted, came to the conclusion

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that the order does not ipso facto become illegal merely because it was not restricted to a period of 30 days or less. It is also clear that the Court (Supreme Court) was to consider the consequence, if any, on account of the court failing to pass the final orders within 30 days as enjoined by Rule 3-A. Only in this context, the Supreme Court has held that the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. This is clear from para 18 of Their judgement. The reading of paragraph 18 of their judgement, it is clear that the aggrieved party can prefer an appeal only against an order passed under Rules 1,2,2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. The Hon'ble Supreme Court has also expressed that in a case where the mandate or order 39 Rule 3A of the Code is floated, the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. They also observed that in such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the Subordinate Court in complying with the provisions of Rule 3A. In the present case, inasmuch as the learned Subordinate Judge has not recorded the reason for its opinion for granting ad-interim injunction without giving notice of application to the opposite party, I am of the view that the said decision is not helpful to the respondents' case as claimed by Mr.N.D.Behetty. I am also satisfied that Their Lordships have very much considered the consequence of failure of non-compliance of sub-rule(a) or (b) of Rule 3 and Rule 3A. Further, the earlier judgments of the Supreme Court, particularly regarding Proviso to Rule 3 have not been cited or referred to in Venkatasubbiah Naidu, A.V.S.Challappan and others, 2001(1) L.W.429. I have already referred to the decisions reported in Morgan Stanley Mutuall Fund v. Kartick Das, 1994(4) SCC 225 and Shiv Kumar Chadha v. Municipal Corporation of Delhi, 1993 (3) S.C.C. 161, wherein the three Judge Bench of the Hon'ble Supreme Court after considering the Proviso to Rule 3, have held in categorical terms that ex parte injunction without recording reasons for its opinion cannot be sustained and this Court can interfere by exercising the

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constitutional power under Article 227. For these reasons, I am of the view that the two Judge Bench decision reported in Venkatasubbiah Naidu, A. v. S. Challappan and others, 2001 (1) L.W.429 relied on by Mr.N.D.Behetty is not helpful and applicable to the case on hand"

9.The learned counsel appearing for the revision petitioner further submitted a judgement in a case of Union of India, Attomic Energy Division through its Administrataive Director, Hyderabad v. R.Karthikai Rajan and others reported in 1999-3-L.W.471 wherein it is held as follows:

"As laid down in 1994 2 LW 266 (Srinivasan,J) it is true that in normal circumstances, this court will not entertain any revision petition against an ad interim exparte order under which notice is also directed to the opposite party. But in cases of gross injustice and patent violation of elementary principles of law, this Court will not hesitate to interfere with such orders. This case is one of such nature. Before ordering interim injunction, the court below failed to see the rights of the petitioners vis-a-vis the rights of the respondents. The court below ought to have seen the necessary pleadings before granting such orders. The Court below has failed to see whether the requirements of Section 39 of the Specific Relief Act have been complied with by the respondents and has also failed to visualise the consequence of the orders. Therefore there is a clear violation of principles of natural justice, where the interference of this court under Article 227 of the Constitution of India is necessary. The Supreme Court has also held that it is not necessary to adopt the technical course of directing the trial court to make the consequential order of rejecting the plaint. The practical course of making that order in the proceedings itself to avoid any needless delay in conclusion of futile litigation should be adopted. In this case, the course adopted by the Court is clear non-application of mind to the facts and as stated above, there is no cause of action and no right, title or interest accrued to the respondents for getting the relief"

The above citations would squarely apply to the facts of this also.

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10.Even without giving a direction to comply the mandatory provisions for supplying the copy of the plaint and document relied upon and Order 39 Rule 3 C.P.C. the injunction order has been passed. Therefore, the injunction granted by the District Munsif, Poonamallee is liable to be suspended/set aside and hence the same is suspended.

11.However the parties should be given an opportunity to agitate their rights before the concerned court. The plaintiff and defendant are at liberty to advance their arguments and the concerned District Munsif shall dispose of the application according to law.

12.It is represented that the case is posted to 3rd November, 2006. On that day the parties shall be heard and the application will be disposed of in accordance with law. With the above observation the civil revision petition is disposed of. No cost. Consequently the connected M.P.No.1 of 2006 is also closed.

vk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

The District Munsif, Poonamallee.

1 cc to Mr.V.Ayyadurai, Advocate, SR.47541
1 cc to Mr.V.P.Sengottuvel, Advocate, SR.47427

jsr (co)

dv/26.10.06

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